



FAIR POLITICAL PRACTICES COMMISSION

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July 20, 2010

Michael D. Schwartz
Office of the District Attorney
County of Ventura
Hall of Justice, 800 S. Victoria Avenue
Ventura, California 93009

RE: Your Request for Advice
Our File No. A-10-034

Dear Mr. Schwartz:

This letter is in response to your request for advice on behalf of the Office of the District Attorney of Ventura County regarding the campaign provisions of the Political Reform Act (the "Act")¹ and the validity of certain provisions of the Ventura County Campaign Finance Reform Ordinance (the "Ordinance"). In our reply, we restrict our comments to the applicability of the Act to your questions. The Commission does not have the jurisdiction to advise on the validity of a local ordinance under the California or U.S. Constitutions. However, the Commission may determine whether a local ordinance conflicts with the Act.

QUESTIONS

1. Are mailers sent by a political party central committee (the "Central Committee") to the party's registered voters advocating for the election of specific candidates "member communications?" If the answer is yes, are payments for the costs of the mailings exempt from the contribution and expenditure limits of the Act?
2. Are the reporting requirements of the Ordinance permissible under the Act as applied to contributions or expenditures made by the Central Committee for member communications?
3. Are the contribution limits of the Ordinance permissible under the Act as applied to contributions made to and used by the Central Committee for member communications?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSIONS

1. Yes. Under Section 85312, the mailers are member communications and payments made for those communications are not contributions or expenditures. Therefore, they are not subject to the Act's contribution limits. However, such payments are subject to the Act's reporting requirements.

2. No. Because the Central Committee is a state general purpose committee under the Act, the Ordinance may not impose additional filing requirements for contributions or expenditures made by the Central Committee.

3. No. Although the Act generally permits the imposition of local contribution limits, it currently does not permit the imposition of local contribution limits on contributions to a political party used to pay for the party's communications to its members.

FACTS

The Ordinance imposes limits on campaign contributions and campaign disclosure requirements that are in addition to those imposed by the Act. The Ordinance provides that unless a word or term is specifically defined in the Ordinance, words and terms have the same meaning as used in the Act. Your questions involve three provisions of the Ordinance.

Section 1269(a) of the Ordinance provides that "the combined total amount a person is allowed to contribute to a candidate's election committee *and all other committees that contribute to that candidate* shall be no more than seven hundred dollars (\$700.00) over the election cycle..." Subsection (b) states that "no committee shall knowingly accept a contribution in excess of fifty dollars (\$50.00) that will cause this seven hundred dollars (\$700.00) limit to be exceeded by any individual contributor." (Emphasis added.)

Section 1270 of the Ordinance, entitled "Contributions to independent expenditure committees" provides that:

"(a) Except as provided in subsection (b) below, no person shall make any contribution to an independent expenditure committee, nor shall any person accept any contribution on behalf of an independent expenditure committee which will cause the total amount contributed by such person to such independent expenditure committee to exceed seven hundred dollars (\$700.00) per election cycle.

"(b) Notwithstanding the prohibition in subsection (a), an independent expenditure committee may receive contributions from any contributor that individually or cumulatively exceed seven hundred dollars (\$700.00) if the funds for the committee's contributions to county candidates and/or independent expenditures are expended from a separate account or accounts

funded entirely by contributions which total seven hundred dollars (\$700.00) or less per contributor per county candidate.

(c) On the same dates and in the same manner as required by the Political Reform Act, Article 2 of Chapter 4 of Title 9 of the Government Code (Section 84200 et seq.), any independent expenditure committee that contributes to or expends funds for or against a county candidate shall disclose each contribution made to it that individually or cumulatively total fifty dollars (\$50.00) or more per contributor.”

Section 1275 of the Ordinance states that:

“(a) In addition to any other report required by the Political Reform Act, a committee that makes independent expenditures of one thousand dollars (\$1,000.00) or more during an election cycle for or against a candidate for elective county office shall file a report with the Clerk disclosing the making of each such independent expenditure. The report shall include the name and full street address of the committee, the Secretary of State identification number of the committee, the name of the treasurer, the names, addresses and occupations of the three largest contributors to the independent expenditure committee during the election cycle, and shall identify the candidate supported or opposed by the expenditure. This report shall disclose the same information required by subdivision (b) of Government Code Section 84204 and shall be filed within twenty-four (24) hours of the time the independent expenditure is made. A copy or transcript of any material published or broadcast shall also be included”

The Central Committee intends to send mailers exclusively to registered voters of its party that would advocate for the election of specific candidates. In accepting contributions, the committee would make no promises or representations to contributors identifying the candidates whose election would be urged in the mailings paid for with their contributions.

ANALYSIS

Question 1 – Are the mailers “member communications?” Are the costs of the mailers exempt from the contribution and expenditure limits of the Act?

Yes. Section 85312 provides that “... payments for communications to members, employees, shareholders, or families of members, employees or shareholders of an organization for the purpose of supporting or opposing a candidate or ballot measure *are not contributions or expenditures*, provided those payments are not made for general advertising such as broadcasting, billboards, and newspaper advertisements.” (Emphasis added.) This is commonly referred to as the “member communications exception.” The mailers you describe fall within

this exception. Therefore, contribution limits imposed by the Act do not apply to payments for the cost of the mailers.² However, such payments are subject to the Act's reporting requirements: "...payments made by a political party for communications to its members who are registered with that party which would otherwise qualify as contributions or expenditures shall be reported in accordance with Article 2 (commencing with Section 84200) of Chapter 4 and Chapter 4.6 (commencing with Section 84600), of this title." (Section 85312; Regulation 18531.7).

Question 2 – Are the reporting requirements of the Ordinance permissible under the Act as applied to contributions or expenditures made by the Central Committee for member communications?

No. Although the Act permits local governments to impose additional filing requirements, the requirements may not conflict with the Act. (Section 81013). Section 81009.5(b) states:

"Notwithstanding Section 81013, no local government agency shall enact any ordinance imposing filing requirements additional to or different from those set forth in Chapter 4 (commencing with Section 84100) for elections held in its jurisdiction unless the additional or different requirements apply only to the candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose the qualification of, or passage of, a local ballot measure which is being voted on only in that jurisdiction, *and to city or county general purpose committees active only in that city or county*, respectively." (Emphasis added.)

Section 82027.5(b) defines a "state general purpose committee," in part, as "a political party committee, as defined in Section 85205." Section 85205 defines a "political party committee" as the state central committee or county central committee of an organization that meets the requirements for recognition as a political party pursuant to Section 5100 of the Elections Code. Accordingly, because the Central Committee is a "state general purpose committee" under the Act, it is not a "city or county general purpose committee active only in that city or county" and is, therefore, not subject to any ordinance that imposes filing requirements that are additional to or different from those set forth in the Act.

Question 3 – Are the contribution limits of the Ordinance permissible as applied to contributions made to and used by the Central Committee for member communications?

No. Section 85703(a) provides that "Nothing in the act shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective

² The only expenditure limits of the Act are voluntary expenditure limits accepted by candidates and are, therefore, not applicable to expenditures by political party committees.

office, except that these limitations and prohibitions may not conflict with the provisions of Section 85312 [concerning member communications].” However, Section 85703(b)(2) expressly prohibits “limitations on payments to a political party committee for a member communication that are not expressly made applicable to member communications by a state statute or by a regulation adopted by the commission pursuant to Section 83112.” No statute or Commission regulation currently provides for a limitation of this type at the local level. Accordingly, until the Commission adopts a regulation setting forth circumstances under which local jurisdictions may limit such payments, the Ordinance may not limit contributions made to and used by the Central Committee for member communications.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in cursive script, appearing to read "Valentina Joyce".

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl